



CITY OF ARCHDALE

CITY COUNCIL

MEETING DATE: Tuesday January 25, 2022

SUBJECT: Duke Energy Franchise Agreement.

RECOMMENDATIONS OR COMMENTS: Duke Energy has a Franchise Agreement with each municipality within their service area. In Archdale's case, agreements were adopted in 1924 and again in 1970 with 50-year terms. It recently came to our attention that this agreement is due for re-adoption.

This franchise agreement spells out who is liable for costs related to the relocation of power lines resulting from construction/road projects. Fortunately, the agreement receives little attention in Archdale as most major road projects are on NCDOT maintained streets, and subject to their own agreement. Staff and the City Attorney have reviewed the proposed agreement and negotiated changes to meet current needs, including limiting the term to 20 years. At this time, staff recommends approving an Ordinance granting a Franchise to Duke Energy Carolinas, LLC.

SUMMARY OF ATTACHED INFORMATION: Proposed Agreement, 1924 Agreement, and 1970 Agreement.

ATTACHMENTS: ☒ YES ☐ NO

AN ORDINANCE GRANTING A FRANCHISE TO

DUKE ENERGY CAROLINAS, LLC

BE IT ORDAINED BY THE CITY COUNCIL (Governing body) OF THE CITY OF ARCHDALE, as follows:

I. DEFINITIONS

- 1.1 As used in this Ordinance, the following terms, words and phrases shall have the meanings respectively ascribed to them in this section:

“Duke Energy” shall mean Duke Energy Carolinas, LLC; a North Carolina limited liability company organized under the laws of the State of North Carolina and authorized to do business in the State of North Carolina and any assignee of or successor in interest to Duke Energy Carolinas, LLC; under this franchise Ordinance.

“City” or “City of Archdale” shall mean the City of Archdale, a municipal corporation located in Randolph County and Guilford County, North Carolina; the area within the territorial City limits of the City of Archdale and within the extraterritorial area surrounding the City to the extent it may be lawfully included as presently or hereafter fixed by law or ordinance; or the City Council or any officer or agent duly authorized in acting on behalf of the City as a municipal corporation, as indicated by the context by which the term is used.

“City Council” shall mean the governing body of the City of Archdale.

II. FRANCHISE GRANTED

- 2.1 Duke Energy is hereby granted the right to construct, operate and maintain an electrical utilities system, including such communications infrastructure as is necessary and convenient for the electrical utility’s purpose, within the City and within the extraterritorial area surrounding the City, to the extent the City may lawfully do so, for the generation, transmission, distribution and sale of electricity to consumers and users within the City and to the City and any and all agencies and departments thereof. Duke Energy is also given permission to do all acts necessary or helpful for the purposes enumerated hereinabove or hereinafter; and assent, and permission is hereby given and granted to Duke Energy, its successors and assigns, to exercise all powers, right and privileges which Duke Energy under and by the terms of its charter, or otherwise is authorized, empowered or permitted to conduct, carry on, exercise, do or transact including, without limitation,

City Clerk

the power, right and privilege to use, lease, sell, convey and transmit power by electricity for manufacturing, lighting, heating, motive power or other purpose or purposes and for the doing of an electrical business generally.

- 2.2 Duke Energy is hereby granted the right, authority, and privilege to construct and install, operate, maintain, renew, replace and repair electrical and communications facilities including but not limited to lines, cables, towers, poles, conduits, transformers, connections and services thereto, in, through, across, along and under streets, avenues, roads, public alleys, lanes, parks, squares, and other public places and ways in the City for the generation, transmission, distribution and sale of electricity, its communications purposes and for any and all other approved purposes, subject to the terms and conditions hereinafter set forth in this Ordinance; provided, however, that nothing in this Ordinance without further approval of the City shall authorize or permit the construction of a cellular tower or similar facility within the public areas described herein.
- 2.3 If the City determines that it is necessary to expand, widen, or improve a road or other public way, the City may require Duke Energy to relocate its facilities that are in conflict with such expansion, widening or improvement. If the City requests such a relocation, it will provide an acceptable alternate location for Duke Energy's facilities at no cost to Duke Energy. If Duke Energy's facilities are, or were originally, located on private property, the City shall pay for the cost of relocation. If, however, Duke Energy's facilities were originally located within the existing public right-of-way which is being, expanded, widened or improved, Duke Energy shall bear the expense of relocating its facilities. If any street improvement project is to be funded in whole or in part by the State of North Carolina or the federal government, or an agency thereof, the City will cooperate with Duke Energy in obtaining reimbursement for its relocation cost to the extent allowable under state and federal law. Such reimbursement, when received, shall be an offset against the cost of relocation to be paid by the City. The relocation cost and reimbursement for relocation costs for facilities installed to provide electric service to the City, including street and area lighting and traffic signals wherever located, shall be determined and paid by the City in accordance with the Applicable Rate Schedules and Service Regulations of Duke Energy on file with the North Carolina Utilities Commission, as the same now exist or as they or any of them may be hereafter amended, modified, changed or annulled in accordance with the laws and regulations pertaining thereto.
- 2.4 Whenever Duke Energy shall cause any opening, excavation or alteration to be made in any street, lane or public place within the City in the construction, operation or maintenance of any of its electrical and communications facilities including but not limited to lines, cables, towers, poles, conduits, transformers, connections and services owned or used by it, Duke Energy shall cause such portions of said street, lane or public place

to be restored to the same or better condition in which it found them as nearly as practicable. Additionally, if Duke Energy shall fail to restore the area to its approximate former condition within a reasonable period of time, but no less than thirty working days after notification by the City, the City shall proceed to restore such streets, lanes and public places as nearly as practicable to their original condition and the City shall submit a statement of the costs for this restoration to Duke Energy. Duke Energy agrees to pay the City for these costs within thirty days.

- 2.5 Pursuant to N.C.G.S. 160A-319(a) this franchise is granted for a term of twenty (20) years beginning _____, 20____, and ending at midnight _____, 20____, and thereafter it shall renew and continue in force on a year to year basis unless terminated by either party upon ninety days written notification to the other. Notwithstanding the foregoing, in the event that the electric industry in North Carolina is deregulated or restructured by state or federal legislation or regulation, or state or federal judicial action which affects retail distribution to the extent that the inhabitants of the City may choose their electric supplier, then upon the date when such legislative, regulatory or judicial action has the force and effect of law, this franchise may be at any time thereafter terminated by either party upon ninety days written notification to the other. This franchise supersedes any and all former rights or franchises of Duke Energy to operate an electrical utilities system in the City with respect to all acts and things done or admitted to be done, on or after _____, 20____.
- 2.6 Duke Energy is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges hereunder and any right or interest therein, as security for indebtedness, subject to acceptance by any legal successor in interest of the obligations, duties, liabilities, limitations and prohibitions set out herein and subject to approval by the North Carolina Utilities Commission or other government agency whose approval is required by law. Duke Energy may not assign or transfer its rights under this franchise agreement without the express consent of the Board of Council Members and such consent shall not be unreasonably withheld, provided, however, that this provision shall not require Duke Energy to obtain permission from the Board of Council Members prior to assigning its rights hereunder to any new entity created in any corporate reorganization or merger in which Duke Energy is a party.
- 2.7 Duke Energy shall save the City, Mayor, City Council members, and the City's officers, agents, servants and employees, harmless from all loss against any and all claims, suites, actions, liability, and judgments for damages (including but not limited to costs and expenses for reasonable legal fees and disbursements and liabilities assumed by the City in connection therewith) sustained by the City or the Mayor or the City Council, or the City's officers, agents, servants or employees, on account of any suit, judgment, execution, claim, or demand whatsoever resulting or

in any manner arising from sole negligence on the part of Duke Energy, its officers, agents, servants and employees in the construction, erection, operation and maintenance of its electric distribution system or the conduct of its business, such negligence having been determined by final order of a court of competent jurisdiction, not subject to appeal.

III. ACCEPTANCE OF FRANCHISE

This Ordinance shall take effect from the day of its passage, but only after it has been accepted in all its terms and revisions by Duke Energy, in writing, within sixty days after its passage otherwise, the same shall be null and void and of no effect.

City Clerk

This Ordinance was passed by a majority vote of the City Council of the City of Archdale, at the regular meeting of the City Council held in the City of Archdale, North Carolina on the _____ day of _____, 20____.

ATTEST:

CITY OF ARCHDALE

City Clerk

BY: _____
Mayor, City of Archdale

(S E A L)

NORTH CAROLINA

_____ COUNTY

This is to certify that on the ____ day of _____, 20____, personally came before me _____, Clerk of the City, who, being by me duly sworn, says that (s)he knows the common seal of the City of Archdale and (s)he is acquainted with _____, Mayor, and that (s)he saw the Mayor sign the foregoing instrument, and that (s)he affixed the City's seal to the instrument and (s)he signed her/his name in attestation of the execution of this instrument in the presence of the Mayor

Witness my hand and official seal, this the ____ day of _____, 20____.

Notary Public

My Commission Expires:

The conditions and stipulations of the above Ordinance are hereby accepted by Duke Energy.

ATTEST:

DUKE ENERGY CAROLINAS, LLC

Assistant Secretary

BY: _____
President

(S E A L)

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged and she/he is _____ of Duke Energy _____, and that by authority duly given and as the act of the company the foregoing instrument was signed in its name by its _____, sealed with its corporate seal, and attested by her/himself as its _____.

Witness my hand and official seal, this the ____ day of _____, 20____.

Notary Public

My Commission Expires:

BE IT ORDAINED BY THE MAYOR AND BOARD OF COMMISSIONERS OF
THE TOWN OF ARCHDALE:

WHEREAS, It is deemed for the best interest of said town to grant a franchise to the North Carolina Public Service Company, Inc., its successors and assigns, hereinafter called the grantee, under the terms of which the said grantee, its successors and assigns, is permitted to supply said town and the citizens thereof with electric current for lighting, heating, power and other purposes;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. That the said Town of Archdale, for and in consideration of the sum of One Dollar and other good and valuable considerations, the receipt of which are hereby acknowledged, has granted unto the said North Carolina Public Service Company, Inc., (hereinafter referred to as the grantee), its successors and assigns, the right and privilege to erect and maintain towers, poles and conduits and to string and to place wires, cables and other appliances thereon, now or hereafter in use for the purpose of conveying and distributing electric energy, upon, over, or under all the public streets, alleys and ways now in use or hereafter laid out in the corporate limits of the Town of Archdale as it is now constituted, or in any additional territory which shall hereafter be added to said town. All these rights and privileges are granted upon and subject to the conditions and limitations set out in the following paragraphs of this Ordinance.

Section 2. Said grantee, its successors and assigns, shall at all times keep and maintain all of its towers, poles, wires, conduits and appliances of all kinds, in, over, or under the streets, alleys, lanes and ways of said Town of Archdale in a proper condition and in such way as not to interfere with the public travel, and it and its assigns shall be bound, during the term in which they make use of the privileges herein granted, to at all times save the said Town of Archdale harmless in every way because of its use of said streets, alleys, lanes or ways.

Section 3. Said grantee, its successors and assigns, shall not, without proper permission therefor, cut or trim trees growing in or over any of said streets, alleys, and ways of said Town of Archdale, but said

Town of Archdale hereby warrants that it will, by its proper authorities, provide for the full and free use of its streets, lanes, alleys and ways as provided in Section 1141 of the Consolidated Statutes of the State of North Carolina, and, upon request, shall promptly designate the locality of all towers, poles, conduits and other fixtures required by the said grantee, its successors and assigns, so that said grantee, its successors and assigns may exercise all the privileges conferred hereby, and in case any trees growing in or along any of the streets, alleys or ways of said town or overhanging the same shall interfere with the erection, maintenance and operation of the electric system to be installed in said town by said grantee, then the said town hereby agrees to keep said trees trimmed to such an extent as may in the opinion of the grantee be necessary to prevent such interference; provided said grantee, its successors and assigns shall pay the expense of trimming trees trimmed for their benefit.

Section 4. Said grantee, its successors or assigns, shall immediately repair any street, way or public place injured by it in the erection, construction, operation or maintenance of any of its poles, towers, conduits or other appliances owned and used by it, its successors or assigns.

Section 5. This franchise shall run for a period of fifty (50) years from May 1, 1924.

*N.C. Public Service Co. to N.P.U.C.
7/1/32 G.O. file A. 529*

NORTH CAROLINA,
TOWN OF ARCHDALE,

The undersigned Mayor of the Town of
Archdale and O. E. Wilson, secretary of
said Town of Archdale, hereby certify that the foregoing is a true
and accurate copy of the Ordinance and Franchise adopted by the
Board of Commissioners of said Town at two regularly and properly
held and constituted meetings of the said Board of Commissioners,
the one being held on Thursday, the 10 day of
April, 1924, and the other being held on Saturday,
the 10 day of May, 1924.

This the 4 day of June, 1924.

Witness:
J. H. Jennings

H. S. Rogan
Mayor of the Town of Archdale

Witness:
R. C. Hassell

O. E. Wilson
Secretary of the Town of
Archdale.

TRANSFERRED TO: Southern Public Utilities Company - 1932

(SECOND READING)

REGULAR MEETING OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF ARCHDALE, THIS THE 28
DAY OF July, 1970.

The following resolution was offered by Mr. Joel E. Williams,
a member of the City Council of the City of Archdale.

WHEREAS, the Mayor and City Council of the City of Archdale at a
Regular Meeting on the 23 day of June, 1970,
did pass upon its First Reading the following Resolution, granting a
Franchise to the Duke Power Company, its successors and assigns, and it
is the opinion of said Mayor and City Council that said Franchise
be passed on its Second and Final Reading:

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED that the following
Ordinance be passed on its Second and Final Reading, to-wit:

AN ORDINANCE AND RESOLUTION granting permission unto the DUKE
POWER COMPANY to construct and maintain its lines for the transmission
of electricity upon, along, over, through and under the streets and
highways of the City of Archdale, County of Randolph, State of North
Carolina, and to conduct and carry on within said City of Archdale the
business authorized by and under the terms of the Charter of said Duke
Power Company.

BE IT RESOLVED AND ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY
OF ARCHDALE:

WHEREAS, it is deemed for the best interest of the City of Archdale
to grant a franchise to the Duke Power Company, its successors and assigns,
hereinafter called the grantee, under the terms of which the said grantee,
its successors and assigns, is permitted to supply said City and the
citizens thereof with electric current for lighting, heating, power and
other purposes.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. That the said City of Archdale, for and in consideration of the sum of One Dollar and other good and valuable consideration, the receipt of which are hereby acknowledged, has granted unto the said Duke Power Company, (hereinafter referred to as the grantee), its successors and assigns, the right and privilege to erect and maintain towers, poles and conduits and to string and to place wires, cables and other appliances thereon, now or hereafter in use for the purpose of conveying and distributing electric energy upon, over, or under all the public streets, alleys, lanes and ways now in use or hereafter laid out in the corporate limits of the City of Archdale as it is now constituted, or in any additional territory which shall hereafter be added to said City. All these rights and privileges are granted upon and subject to the conditions and limitations set out in the following paragraphs of this Ordinance.

Section 2. Said grantee, its successors and assigns, shall at all times keep and maintain all of its towers, poles, wires, conduits and appliances of all kinds, in, over or under the streets, alleys, lanes and ways of said City of Archdale in a proper condition and in such way as not to interfere with the public travel, and it and its assigns shall be bound, during the term in which they make use of the privileges herein granted, to at all times save the said City of Archdale harmless in every way because of its use of said streets, alleys, lanes or ways.

Section 3. Said grantee, its successors and assigns, shall not, without proper permission therefor, cut or trim trees growing in or over any of said streets, alleys, lanes and ways of said City of Archdale, but said City of Archdale hereby warrants that it will, by its proper authorities, provide for the full and free use of its streets, lanes,

alleys and ways and, upon request, shall promptly designate the locality of all towers, poles, conduits and other fixtures required by the said grantee, its successors and assigns, so that said grantee, its successors and assigns, may exercise all the privileges conferred hereby; and in case any trees growing in or along any of the streets, alleys, lanes or ways of said City or overhanging the same shall interfere with the erection, maintenance and operation of the electric system to be installed in said City by said grantee, then the said City hereby agrees to keep said trees trimmed to such an extent as may in the opinion of the grantee be necessary to prevent such interference; provided said grantee, its successors and assigns, shall pay the expense of trimming trees trimmed for its benefit.

Section 4. Said grantee, its successors or assigns, shall immediately repair any street, way or public place injured by it in the erection, construction, operation or maintenance of any of its poles, towers, conduits or other appliances owned and used by it, its successors or assigns.

Section 5. This franchise shall run for a period of fifty (50) years from August 1, 1970.

STATE OF NORTH CAROLINA

CITY OF ARCHDALE

The undersigned Mayor of the City of Archdale and
Nancy F. Burrow City Clerk of said City of Archdale,
hereby certify that the foregoing is a true and accurate copy
of the Ordinance and Franchise adopted by the City Council of
said City at two regularly and properly held and constituted
meetings of the said City Council, the one being held on the
23 day of June 1970, and the
other being held on the 28 day of July 1970.

- This the 29 day of July, 1970.

Henry J. Forks, Jr.
Mayor of the City of Archdale

ATTEST:

(Corporate Seal)

Nancy F. Burrow
Clerk of the City of Archdale